

Case 1:18-cv-00431-MAC-ZJH Document 25 Filed 08/04/20 Page 1 of 2 PageID #: 362

**EASTERN DISTRICT OF TEXAS**

AVERY LAMARR AYERS,

Petitioner,

*versus*

WARDEN, FCI BEAUMONT LOW,

Respondent.



CIVIL ACTION NO. 1:18-CV-431

**MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner Avery Lamarr Ayers, a former inmate confined at the Federal Correctional Complex in Beaumont, Texas, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Zach Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends that the above-styled petition should be dismissed.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).


After careful consideration, the court concludes petitioner's objections are without merit. Petitioner was convicted and sentenced in the United States District Court for the Southern District of Texas. As the magistrate judge found, to the extent petitioner is challenging the manner in which the sentencing judge imposed the sentence, his claim does not meet the criteria required to support a claim under the savings clause of 28 U.S.C. § 2255. Further, since filing this petition, petitioner has been released from custody and he has completely discharged his sentence on July 21, 2020. *See* <https://www.bop.gov/inmateloc/>. Therefore, petitioner's claims are moot and this

court lacks jurisdiction to resolve the issue of whether he served excess prison time. *See Lawson v. Berkebile*, 308 F. App'x 750, 752 (5th Cir. Jan. 26, 2009).

**ORDER**

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 4th day of August, 2020.

A handwritten signature in cursive script, reading "Marcia A. Crone".

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE